

Message Text

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ACTION IO-03

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FODAG

E.O. 11652: N/A

TAGS: OCON, FAO, EAGR

SUBJECT: COMMITTEE ON COMMODITY PROBLEMS: LEGAL DIFFICULTIES

WITH INTERNATIONAL UNDERTAKING ON WORLD FOOD SECURITY

FOR AMB MARTIN (S/WF)

FOR KATZ (EB)

FOR ALDRICH (I)

PASS USDA FOR GOODMAN

REF: ROME 14153

1. FRASER AND FELDMAN MET WITH BOERMA AND HIS STAFF TUESDAY MORNING, OCTOBER 15, TO DISCUSS LEGAL IMPLICATIONS OF DRAFT UNDERTAKING AND TO SEEK HIS ADVICE ON POSSIBLE MEANS TO AVOID AN INTERNATIONAL AGREEMENT THAT MIGHT REQUIRE SUBMISSION TO CONGRESS FOR APPROVAL. FRASER EMPHASIZED THAT THE U.S. WAS RAISING A TECHNICAL, LEGAL QUESTION THAT SHOULD NOT BE MIS-UNDERSTOOD AS ANY WEAKENING OF U.S. SUPPORT FOR THE UNDERTAKING. BOERMA WAS MOST UNDERSTANDING OF U.S. PROBLEM AND APPEARED

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RELAXED AND HELPFUL THROUGHOUT. HE DID URGE, HOWEVER, THAT

U.S. NOT SEEK CHANGES IN THE TEXT OF THE UNDERTAKING AT THIS LATE STAGE. FRASER INDICATED THAT THE U.S. HOPED NO CHANGES WOULD BE MADE IN THE UNDERTAKING APPROVED BY THE WORKING PARTY LAST MAY.

2. FELDMAN AND NORRED MET WITH FAO STAFF THROUGH LUNCH AND FOR REST OF THE AFTERNOON AND ULTIMATELY SUCCEEDED IN DEVELOPING A COMPROMISE SOLUTION WHICH BOERMA HAS APPROVED AND WHICH WE ARE RECOMMENDING FOR WASHINGTON'S APPROVAL. THE ELEMENTS OF THIS COMPROMISE ARE:

- A) THE U.S. DEL WILL INTRODUCE NO CHANGES IN THE UNDERTAKING UNLESS THAT TEXT IS REOPENED BY OTHERS;
- B) THE SECRETARIAT WILL PROPOSE AS ITS OWN INITIATIVE REVISIONS IN PARAS 1 AND 2 OF THE DRAFT COUNCIL RESOLUTION SO THAT THE COUNCIL WOULD "ENDORSE" RATHER THAN ADOPT THE UNDERTAKING AND MEMBER NATIONS WOULD BE INVITED "TO SIGNIFY THEIR READINESS TO ADHERE TO THE POLICIES AND PROCEDURES SET FORTH IN THE INTERNATIONAL UNDERTAKING;
- C) ARRANGEMENTS WOULD BE MADE TO INCLUDE IN THE REPORT OF THE CCP SPECIFIC EXPLANATION THAT THE UNDERTAKING WAS NOT INTENDED TO GIVE RISE TO LEGAL OBLIGATIONS; AND
- D) THE U.S. WOULD MAKE WHATEVER FURTHER QUALIFICATIONS IT DEEMS NECESSARY AT THE TIME IT REPORTS ITS "ADHERENCE" TO THE DIRECTOR-GENERAL.

3. WE BELIEVE THAT THIS COMPROMISE WOULD ACCOMPLISH THE BASIC PURPOSE OF PARA 2 OF THE "U.S. POSITION" IN OUR POSITION PAPER FOR THIS ITEM BY PROVIDING A PLAUSIBLE BASIS FOR THE U.S. TO MAINTAIN THAT IT IS NOT ENTERING AN INTERNATIONAL AGREEMENT OR ACCEPTING LEGAL OBLIGATIONS WHEN IT INDICATES "ADHERENCE." SAME RATIONALE SHOULD MAKE IT UNNECESSARY TO FORMALLY TRANSMIT THE DOCUMENTS TO CONGRESS UNDER THE CASE ACT. WOULD APPRECIATE WASHINGTON'S COMMENTS ON THIS PROPOSED ARRANGEMENT ASAP AS DEBATE ON THIS ITEM BEGINS MORNING OCTOBER 16. ABSENT FURTHER INSTRUCTIONS, WE SHALL PROCEED ON THIS BASIS.

4. AMBASSADOR MARTIN MAY WISH TO THANK BOERMA FOR HIS COOPERATION IN THIS MATTER WHEN HE SEES HIM LATER THIS WEEK. IN THIS REGARD, YOU SHOULD BE AWARE THAT WE DID NOT DISCUSS WITH BOERMA U.S. RESERVATIONS CONCERNING THE PARAGRAPHS OF THE DRAFT COUNCIL LIMITED OFFICIAL USE

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RESOLUTION ESTABLISHING MACHINERY TO IMPLEMENT THE UNDERTAKING. OUR POSITION ON THIS ASPECT WAS MADE CLEAR, HOWEVER, TO HIS STAFF, I.E., LEEKS AND CONTINI.
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